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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,672	06/20/2003	John Wesley Stamp	CUL-0001-C	7044

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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/600,672	Applicant(s) STAMP, JOHN WESLEY	
	Examiner Jeffrey L. Gellner	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-29 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-20 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soltanzad et al. (2<sup>nd</sup> document on 2<sup>nd</sup> page of Applicant's A820) in view of Poole et al. (1<sup>st</sup> document on 2<sup>nd</sup> page of Applicant's A820).

As to claims 17, 20, and 27, Soltanzad et al. discloses a growth medium for plants comprising sugar cane mill mud ("FPM" of Table 2 on page 44) and a peat material ("peat moss" of Table 2 of page 44). Not disclosed is the peat moss being non-sphagnum peat. Poole et al., however, discloses a growth medium with non-sphagnum peat ("Florida sedge peat" of Table 1 of page 287). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the medium of Soltanzad et al. by using non-sphagnum peat as disclosed by Poole et al. depending upon cost and availability of materials.

As to claims 18 and 19, Soltanzad et al. as modified by Poole et al. further disclose a ratio of about 1:1.4 (from Soltanzad et al. in that a ratio of 1:1 is about 1:1.4).

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Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soltanzad et al. (2<sup>nd</sup> document on 2<sup>nd</sup> page of Applicant's A820) in view of Poole et al. (1<sup>st</sup> document on 2<sup>nd</sup> page of Applicant's A820) in further view of Ollerenshaw et al. (US 5,542,962).

As to claim 21, the limitations of claim 17 are disclosed and described above. Not disclosed is the medium a casing soil composition. Ollerenshaw et al., however, discloses a growth medium also used as a casing soil composition (col. 7 lines 23-28). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the medium of Soltanzad et al. as modified by Poole et al. by using as a casing soil composition as disclosed by Ollerenshaw et al. so as to increase the uses of the material.

As to claim 22, Soltanzad et al. as modified by Poole et al. and Ollerenshaw et al. further disclose the water wt/vol to be 65 to 70% (col. 3 lines 37-40).

As to claim 23, Soltanzad et al. as modified by Poole et al. and Ollerenshaw et al. further disclose pH controlling agent ("dolomite" of 2<sup>nd</sup> col. of page 287 of Poole et al.).

Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soltanzad et al. (2<sup>nd</sup> document on 2<sup>nd</sup> page of Applicant's A820) in view of Poole et al. (1<sup>st</sup> document on 2<sup>nd</sup> page of Applicant's A820) in further view of McCallister (US 4,219,966).

As to claims 24 and 26, the limitations of claim 17 are disclosed and described above. Not disclosed is a filler of bagasse at about 30 to about 80% wt. McCallister, however, discloses a growth medium with a bagasse filler at 80% (col. 3 lines 17-21 and 50-53). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the medium of Soltanzad et al. as modified by Poole et al. by having a bagasse filler at 80% as

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disclosed by McCallister so as to use the medium as a rapid grass medium (McCalliser at abstract).

As to claim 25, the limitations of claim 24 are disclosed and described above. Not disclosed is the filler being about 60 to 70% wt. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the medium of Soltanzad et al. as modified by Poole et al. and McCallister by having a filler at from about 60 to about 70% wt. depending upon the growth needs of the species of plant.

### *Response to Arguments*

Applicant's arguments filed 13 January 2006 have been fully considered but they are not persuasive. Applicant's arguments are: (1) no motivation to combine Soltanzad and Poole et al., in fact, Soltanzad teaches away from finding an alternative for sphagnum peat by specially teaching its use and not a replacement (Remarks page 5, top of page; page 6, top of page); (2) Poole is silent as to using an alternative for sphagnum peat (Remarks page 6, 1<sup>st</sup> complete para.); (3) secondary considerations support the conclusion that the present invention is non-obvious (Remarks page 8, 1<sup>st</sup> complete para.); and (4) no reasonable expectation of success found in the prior art for the combination of Soltanzad and Poole et al. (Remarks page 8, bottom of page).

As to arguments (1) and (2), Soltanzad discloses sugar cane mill mud in combination with peat moss but also bark to grow plants. Hence, Soltanzad discloses the use of one other materials with sugar cane mill mud. Poole et al. disclose the use of nonsphagnum peat to grow plants. Whitcomb discloses that different types of peat can be used for plant growth media (from "[b]oth extremes in peat quality are useful in container growth media" at page 186, top half of

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page). Whitcomb also discloses that “some media components are available only in local areas while others are widely distributed” at page 185, middle of page. Whitcomb discloses a motivation for substituting Florida sedge peat for sphagnum peat in the composition of Soltanzad. The motivation is availability of the material.

As to argument (3), in order for secondary considerations to have probative value they must be factually supported by an appropriate affidavit or declaration (MPEP 716.01(c)(I)). Declaratory statements by the attorney is not dispositive (see generally MPEP 716.01(c)(I)).

As to augment (4), Whitcomb discloses that different types of peat can be used for plant growth media (from “[b]oth extremes in peat quality are useful in container growth media” at page 186, top half of page). This statement shows a reasonable expectation of success for the combination of Soltanzad and Poole et al.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kuepper (2006) and Kuepper (2004) disclose in the prior art/art various potting mixes with peat.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner  
Primary Examiner  
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